

Answer to



S-21049A-18-0223

①

ORIGINAL

My Name is Mark Corbett, Single ~~never~~ been married  
and the following are my answers

Arizona Corporation Commission

DOCKETED

JUN 23 2018

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### Overview

1. I was a customer and sold a future payment on my pension for 13 1/2 years.
2. I offered to refer others once my sale was completed.
3. Drew provided me with a website, computer and Camber (VFC) instructions on how to refer applicants. I was one of several 'vendors' he used at the time.
4. I met Andrew Camber once in a day, met at his office in Little Rock, met his legal team including Tom Sheets and was assured everything was legal and correctly done.
5. My name appears on No Contracts of Sale or anything other than initial seller application as "Vendor" so they would know who to pay the referral fee to.
6. I simply sent out quotes to applicants who applied at the website, and then sent them start up application if they wished to apply. That was the full extent of my involvement.

7. Once their application was sent in my involvement was done. All <sup>Subsequent</sup> communication was between VFC, BAIC, SBC and the Seller directly.
8. I had no involvement whatsoever thereafter. I had nothing to do with underwriting, approval, Sale of income stream, acquisition of Buyers (Buyers) or Escrow. That was all handled by VFC, BAIC etc.
9. I was a CUSTOMER who referred applicants for a small referral fee that by 2014-2015 was almost nothing. Average application took 2-3 months and when a sale ~~date~~ closed I was paid an average of \$500/sale. If anyone was getting rich it certainly wasn't me.
10. I am currently working two jobs just to pay the rent. I own nothing, just live paycheck to paycheck.
11. I obviously cannot ~~afford~~ afford an Attorney so I will be representing myself if called on to do so.

12. When SBC closed their doors I was  
no longer sending in applicants. PAC  
approached me in 2/2016 to ask  
if I would start sending applicants  
to them. I agreed. The verbiage on  
the Sales Assistance agreement subsequently  
evolved from "Vendor" to "agent" but it  
was all in the same capacity. My websites  
generated leads, I sent them quotes  
(provided by VFB, BAIC, SBC and PAC) and if  
interested, sellers sent in an application  
which I then sent to PAC. End of  
story & End of my involvement in the  
process. To this day I have ZERO  
to do with underwriting, approval, finding  
buyers, escrow or ANYTHING in the closing  
process. I simply get requests for quote  
from the website, send out the quote &  
send in the application if seller elects to  
proceed. Same as I've always done. They can  
call me an "agent" or "Vendor" or "lead generator"  
its all the same. I am not part  
of approval or sale processes.

Mark Corbett  
7-19-2018

# NEW APPLICATION

## BEFORE THE ARIZONA CORPORATION COMMISSION

### COMMISSIONERS

TOM FORESE - Chairman  
BOB BURNS  
ANDY TOBIN  
BOYD DUNN  
JUSTIN OLSON

*MARK Corbett* (also 3 attached pages)

*Answers WRITTEN IN*

*Mark Corbett*

In the matter of:

DOCKET NO. S-21049A-18-0223

Performance Arbitrage Company, Inc., a  
Delaware corporation,

**NOTICE OF OPPORTUNITY FOR HEARING  
REGARDING PROPOSED ORDER TO CEASE  
AND DESIST, ORDER FOR RESTITUTION,  
ORDER FOR ADMINISTRATIVE  
PENALTIES AND ORDER FOR OTHER  
AFFIRMATIVE ACTION**

Michelle Plant, a Mississippi resident,

Financial Product Distributors, LLC, a  
Delaware limited liability company,

Michael David Woodard (CRD # 3270674)  
and Jane Doe Woodard, husband and wife,  
residents of Texas,

Mark Corbett and Jane Doe Corbett, husband  
and wife, residents of California,

Upstate Law Group, LLC, a South Carolina  
limited liability company, and

Candy Kern-Fuller, a South Carolina  
resident,

Respondents.

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**NOTICE: EACH RESPONDENT HAS 10 DAYS TO REQUEST A HEARING**

**EACH RESPONDENT HAS 30 DAYS TO FILE AN ANSWER**

The Securities Division ("Division") of the Arizona Corporation Commission ("Commission") alleges that respondents Performance Arbitrage Company, Inc., Michelle Plant, Financial Product Distributors, LLC, Michael David Woodard (CRD # 3270674), Mark Corbett, Upstate Law Group, LLC, and Candy Kern-Fuller have engaged in acts, practices, and transactions that constitute violations of the Securities Act of Arizona, A.R.S. § 44-1801 *et seq.* ("Securities Act").

1 The Division also alleges that Michelle Plant is a person controlling Performance Arbitrage  
2 Company, Inc., Michael David Woodard is a person controlling Financial Product Distributors, LLC,  
3 and Candy Kern-Fuller is a person controlling Upstate Law Group, LLC within the meaning of A.R.S.  
4 § 44-1999(B), so that those individuals are jointly and severally liable under A.R.S. § 44-1999(B) to the  
5 same extent as the entities they respectively control for those entities' violations of the antifraud  
6 provisions of the Securities Act.

7 **I.**

8 **JURISDICTION**

9 1. The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona  
10 Constitution and the Securities Act.

11 **II.**

12 **RESPONDENTS**

13 2. Respondent Performance Arbitrage Company, Inc. ("PAC") is a Delaware corporation  
14 that was incorporated on February 3, 2014. PAC's principal place of business is a Regus Business  
15 Center office located at 232 Market Street, Flowood, Mississippi 39232. PAC has not been registered  
16 by the Commission as a securities salesman or dealer.

17 3. Respondent Michelle Plant ("Plant") is a Vice-President and the Chief Operating Officer  
18 of PAC. Upon information and belief, Plant is a resident of Mississippi. Plant has not been registered  
19 by the Commission as a securities salesman or dealer.

20 4. Respondent Financial Product Distributors, LLC ("FPD") is a Delaware limited  
21 liability company with its principal place of business in Austin, Texas. FPD has not been registered  
22 by the Commission as a securities salesman or dealer.

23 5. Respondent Michael David Woodard ("Woodard") (CRD # 3270674) is a resident of  
24 Texas. Woodard was registered as a securities salesman with the Commission from June 16, 2015,  
25 to July 27, 2015. On July 8, 2016, FINRA barred Woodard from association with any FINRA  
26 member in any capacity.

6. Woodard is the Managing Partner of FPD.

7. Upon information and belief, Jane Doe Woodard was at all relevant times the spouse of Respondent Woodard.

8. Respondent Mark Corbett ("Corbett") is a resident of Rancho Mission Viejo, California. Corbett has not been registered by the Commission as a securities salesman or dealer. *Correct*

9. Upon information and belief, Jane Doe Corbett was at all relevant times the spouse of Respondent Corbett. *I was a Lead Generation Website - That's it. Denied*

10. Respondent Upstate Law Group, LLC ("ULG") is a South Carolina limited liability company practicing law from its offices in Easley, South Carolina. ULG has not been registered by the Commission as a securities salesman or dealer.

11. Respondent Candy Kern-Fuller ("Kern-Fuller") is a resident of South Carolina and an attorney. Kern-Fuller is a founder of and partner in ULG. Kern-Fuller has not been registered by the Commission as a securities salesman or dealer.

12. Jane Doe Woodard and Jane Doe Corbett may be referred to collectively as "Respondent Spouses." Respondent Spouses are joined in this action under A.R.S. § 44-2031(C) solely for purposes of determining the liability of their and Respondents Woodard's and Corbett's respective marital communities. *Denied*

13. At all relevant times, Respondents Woodard and Corbett were acting for their own benefit and for the benefit or in furtherance of their and Respondent Spouses' respective marital communities. *Denied*

14. PAC, Plant, FPD, Woodard, Corbett, ULG, and Kern-Fuller may be referred to collectively as "Respondents."

### III.

### OVERVIEW

15. This case involves Respondents' scheme to sell veterans' pensions and disability benefits to investors even though federal law expressly prohibits such sales.

1           16. Federal law declares that any agreement to purchase payments from a military pension  
 2 or benefits is prohibited. 38 U.S.C. § 5301(a) (prohibiting assignment of veterans' benefits); 37  
 3 U.S.C. § 701 (prohibiting assignment of military retirement pay). The core purpose of these laws is  
 4 to protect veterans' economic interests and ensure that they always have available to them their  
 5 federal income stream. *See Porter v. Aetna Cas. & Sur. Co.*, 370 U.S. 159, 162 (1962) (38 U.S.C. §  
 6 5301 "should be liberally construed to protect funds granted by the Congress for maintenance and  
 7 support of the beneficiaries thereof."). *No Involvement*

8           17. Despite these prohibitions, from March 17, 2017 to at least May 23, 2017,  
 9 Respondents made, participated in and/or induced the offers and sales of investments whereby  
 10 veterans agree to sell the income streams from their military retirement or disability benefits  
 11 payments for a period of years to investors in exchange for a discounted lump sum payment. *Denied*

12           18. These income stream investments involve the sales of notes and constitute investment  
 13 contracts and/or evidences of indebtedness. These income stream investments are securities under  
 14 the Securities Act. *Denied*

15           19. In offering the investments, Respondents failed to disclose to investors that federal  
 16 law expressly prohibits the sale of these income streams. *Denied* *See* 38 U.S.C. § 5301(a); 37 U.S.C. § 701.

17           20. Respondents also failed to disclose multiple cease and desist orders and consent orders  
 18 securities regulators in at least six other states entered against Plant's prior employer, VFG, LLC,  
 19 where Plant was the Director of Compliance, for violations of those states' securities laws, including  
 20 antifraud violations, arising from the sale of income stream investments involving veterans' pensions  
 21 and disability benefits. *Denied*

22           21. From March 17, 2017 to at least May 23, 2017, Respondents made, participated in  
 23 and/or induced at least six sales of income stream investments within or from Arizona to Arizona  
 24 investors totaling \$371,191.23. *No idea, I just sent in*

25 ....

26 ....

*Applicants*

## IV.

## FACTS

The Operation of the Federal Anti-Assignment Acts

22. Federal law as provided in 38 U.S.C. § 5301(a) prohibits any purported sale or assignment of military benefits for consideration. It states in relevant part:

(1) Payments of benefits due or to become due under any law administered by the Secretary *shall not be assignable* except to the extent specifically authorized by law, and such payments made to, or on account of, a beneficiary shall be exempt from taxation, *shall be exempt from the claim of creditors*, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary.

...

(3)(A) This paragraph is intended to clarify that, in any case where a beneficiary entitled to compensation, pension, or dependency and indemnity compensation enters into an agreement with another person under which agreement such other person acquires for consideration the right to receive such benefit by payment of such compensation, pension, or dependency and indemnity compensation ... *such agreement shall be deemed to be an assignment and is prohibited.*

...

(C) Any agreement or arrangement for collateral for security for an agreement that is prohibited under subparagraph (A) is also *prohibited and is void from its inception.*

38 U.S.C. § 5301(a) (emphases added).

23. To similar effect, 37 U.S.C. § 701 states that “[a]n enlisted member of the Army, Navy, Air Force, or Marine Corps may not assign his pay, and if he does so, the assignment is void.”

24. For purposes of 37 U.S.C. § 701, the term “pay” includes retirement pay. *See* 37 U.S.C. § 101(21)

25. For purposes of this Notice of Opportunity for Hearing, 37 U.S.C. § 701 and 38 U.S.C. § 5301 are referred to as the Federal Anti-Assignment Acts.

....

The Structure of Respondents' Investment Offerings

26. The investments Respondents offered and sold involved a program where a veteran receiving an income stream from a military retirement pension or disability benefits (the seller) appointed Corbett as his agent to sell part of the future payments from the pension or disability benefits in exchange for a discounted lump sum payment. *Denied (I sent in the application, is all)*

27. Respondents, except for ULG, then matched an investor (the buyer) to purchase the veteran's pension or disability benefit payments for a specific term of eight or ten years. Respondents represented that the investor would receive a specified rate of return, which ranged between 7.5% and 8.0% depending on the investment. *Denied*

28. To complete a sale when an investor agreed to invest, Respondents used several form documents that were presented to the investor in a "Closing Book." The Closing Book form documents were substantially identical regardless of whether PAC or FPD was offering the investment. *Denied*

29. None of the documents in the Closing Books that Respondents provided to investors disclosed that the Federal Anti-Assignment Acts prohibit the sale or assignment of the veterans' pension and disability payments. *No Involvement*

30. Each Closing Book included a "Sales Assistance Agreement," which the veteran executed to appoint Corbett as his or her agent to sell future payments from the veteran's pension or disability benefits "to one or more third party potential Buyer(s), the identities of which are to be provided to Mark Corbett by independent parties." *Denied* *Correct but Page all I was was a lead generator*

31. The Sales Assistance Agreements provided for the veteran to pay Corbett a commission at the closing of the sale. ULG also received fees when those sales closed. *Denied* ~~Corbett~~

32. Each Closing Book also included a "Purchase Assistance Agreement," which the investor executed to engage PAC or FPD to assist in purchasing future payments from the veteran's pension or disability benefits. *Denied*

*PAC & ULG were solely responsible for entire transaction. I simply sent in applicants.*

1           33. The Purchase Assistance Agreements directed the investor to send his or her  
2 investment monies payable to ULG's IOLTA client trust account. *No Involvement*

3           34. A FPD marketing brochure described the purported protection ULG and the use of its  
4 trust account provided to investors: *No Involvement*

5  
6           To further protect Buyers, we engage independent counsel through Upstate Law  
7 Group, LLC ("ULG") to review all supporting documentation in the Closing  
8 Book to ensure the due diligence process is completed as set out in the Buyer's  
9 Purchase Assistance Agreement. Additionally, the utilization of ULG for  
closing the transactions and servicing the ongoing payments ensures a Buyer's  
funds are always in the hands of an insured escrow agent.

...

10           Funds escrowed with ULG are held in an IOLTA account (Interest on Lawyers  
11 Trust Account) therefore legally segregated from the firm's operating account;  
12 and for further protection ULG maintains Lawyers Professional Liability  
insurance.

13           35. Each Closing Book also included a "Contract for Sale of Payments," which the  
14 veteran and the investor executed in counterparts. *No Involvement*

15           36. The Contract for Sale of Payments recited: "Seller desires to sell certain fixed  
16 payments arising from a certain Structured Asset once they have been distributed to and received into  
17 an account of the Seller ('Payments')." The "Source of the Payments" was identified as either the  
18 veteran's military pension or disability benefits. *No Involvement*

19           37. The Contract for Sale of Payments provided: "Seller shall transfer and sell to Buyer  
20 at Closing one hundred percent (100%) of Seller's right, title and interest in and to the Payments as  
21 described above after said payment is received from the payment source; provided however, that the  
22 Payment Source and underlying asset shall remain the sole property of Seller and shall remain under  
23 the control of Seller per Federal or State law." *No Involvement*

24           38. The provision for the veteran to "transfer and sell ... one hundred percent (100%) of  
25 [his or her] right, title and interest in and to the Payments" contravened the Federal Anti-Assignment  
26 Acts. See 38 U.S.C. § 5301(a) ("Payments of benefits due or to become due ... shall not be

assignable...."); 37 U.S.C. § 701 ("An enlisted member of the Army, Navy, Air Force, or Marine Corps may not assign his pay, and if he does so, the assignment is void."). Pursuant to those statutes, the veteran, and not the investor, retained all rights and claims to the future pension or benefits payments. *No Involvement*

39. Under the Contract for Sale of Payments, the veteran agreed to provide for ULG to receive an automatic draft in the amount payable to the investor by the 2<sup>nd</sup> day of each month from the veteran's bank account where the Defense Finance and Accounting Services ("DFAS") or the Veterans' Administration deposited the veteran's monthly benefit payments. The Closing Book included a "Payment and Account Verification" form executed by the veteran authorizing ULG to make ACH debits and withdrawals from the veteran's bank account for the monthly amounts specified in the Contract for Sale of Payments. *No Involvement*

40. After ULG received a veteran's monthly pension or disability payment, ULG disbursed the payment to the investor who had purchased that veteran's monthly payment. *No Involvement*

41. Section 9.2 of the Contract for Sale of Payments stated: *No Involvement*

9.2. BOTH PARTIES INTEND THAT THE TRANSACTION(S) CONTEMPLATED BY THIS CONTRACT FOR SALE SHALL CONSTITUTE VALID SALE(S) OF PAYMENTS AND SHALL NOT CONSTITUTE IMPERMISSIBLE ASSIGNMENT(S), TRANSFER(S), OR ALIENATION OF BENEFITS BY SELLERS AS CONTEMPLATED BY APPLICABLE LAWS; HOWEVER, CERTAIN RISKS PERSIST.

42. Section 9.2's representation of the transaction as "valid" and not an "impermissible assignment" was misleading in light of Respondents' failure to disclose that the Federal Anti-Assignment Acts prohibit the sale or assignment of the pension and disability payments at issue. *No Involvement*

43. Each Closing Book also included a "Disclosure of Risks Statement," which the investor had to sign. The Disclosure of Risks Statement stated in relevant part: *No Involvement*

#### **Restrictions On Assignability/Collectability**

Pension payments fall under regulations that restrict the assignment of the scheduled payments due thereunder.... Consequently, this transaction is a purchase of a contractual right to a payment obligation and not the payment *per se*. Although certain courts have held transactions of this nature to be

1 enforceable, even in the presence of an anti-assignment clause, there is no  
2 assurance that a future court would permit the enforcement of payment rights  
3 under this arrangement.

4 44. The representation that regulations “restrict” the assignment of pension and disability  
5 payments was misleading in light of Respondents’ failure to disclose that the Federal Anti-  
6 Assignment Acts do not just “restrict” but prohibit their assignment. *See* 38 U.S.C. § 5301(a)  
7 (“Payments of benefits due or to become due ... shall not be assignable....”); 37 U.S.C. § 701  
8 (prohibiting assignment of military retirement pay). *No Involvement*

9 45. The representation that, “certain courts have held transactions of this nature to be  
10 enforceable” but a future court might not, was misleading in light of Respondents’ failure to disclose  
11 that several courts applying the Federal Anti-Assignment Acts have held transactions of this nature  
12 to be unenforceable. *See Dorfman v. Moorhous*, 108 F.3d 51, 55-56 (4<sup>th</sup> Cir. 1997) (officer’s  
13 attempted assignment of retirement pay was invalid pursuant to 37 U.S.C. § 701); *In re Dunlap*, 458  
14 B.R. 301, 325 (Bankr. E.D. Va. 2011) (same); *In re Webb*, 376 B.R. 765, 767-68 (Bankr. W.D. Okla.  
15 2007) (contract under which veteran agreed to have his monthly pension amounts deposited to bank  
16 account from which structured investment company would withdraw the monthly pension amounts,  
17 in exchange for an upfront lump sum payment to veteran, was unenforceable); *In re Price*, 313 B.R.  
18 805, 809 (Bankr. E.D. Ark. 2004) (“[A] sale of [the service member’s] future pension rights is  
19 specifically prohibited by federal law.”). *No Involvement*

20 46. The Disclosure of Risks Statement also stated in relevant part:

***Non-receipt of Scheduled Payment/Collections***

21 Non-receipt of Payments could occur for a number of reasons ranging from  
22 administrative delays ... [to] an intentional payment diversion. An intentional  
23 diversion occurs when a Seller redirects any Payments subject to a contract with  
24 a Buyer to any entity other than the Buyer in violation of the Seller’s contractual  
25 agreement with the Buyer. A diversion is viewed as an intentional  
26 default/breach by the Seller. It is the responsibility of the Buyer to ... take  
action for the collection of Payments expected but not received. Buyer’s ability  
to enforce judgments, realize success in the garnishment process (if allowed in  
the forum state), and prevail in the redirecting of the Payments cannot be  
guaranteed.

1           47.     The purported disclosure about the risk that a veteran might re-direct the pension or  
2     disability benefits back to himself was misleading in light of Respondents' failure to disclose that the  
3     Federal Anti-Assignment Acts prohibit the sale or assignment of the pension and disability payments  
4     in the first place. *No involvement*

5           48.     The purported disclosure about the potential for the investor to obtain and collect a  
6     judgment against the veteran who re-directed his disability benefits payments to himself was  
7     misleading in light of Respondents' failure to disclose that disability benefit payments are "exempt  
8     from the claim of creditors, and shall not be liable to attachment, levy, or seizure by or under any  
9     legal or equitable process whatever...." 38 U.S.C. § 5301(a). *No Involvement*

10          49.     Collectively, the Closing Book documents represented the investment to be a binding  
11     and legally enforceable contractual obligation for the veteran to pay and the investor to receive future  
12     payments from the veteran's pension or disability benefits in exchange for the upfront lump sum  
13     payment to the veteran. *No Involvement*

14  
15                   **Respondents' Failure to Disclose Prior Securities Orders against Plant's Prior**  
16                   **Employer Arising from the Sale of Investments Involving Veterans' Benefits.**

17          50.     For five (5) investments that Respondents sold between March and May 2017, the  
18     investors executed PAC's Purchase Application, and PAC was a party to those investors' Purchase  
19     Assistance Agreements. As alleged above, Respondent Michelle Plant is a Vice-President and the  
20     Chief Operating Officer of PAC.

21          51.     Plant was previously the Director of Compliance for non-party VFG, LLC, which was  
22     also known as Voyager Financial Group, LLC ("VFG").

23          52.     Between April 2013 and November 2014, VFG was the subject of the following cease  
24     and desist orders and consent orders entered by securities regulators in six states for securities  
25     violations arising from the sale of income stream investments involving veterans' pensions and  
26     disability benefits: *No Involvement*

1 a) On April 22, 2013, the Arkansas Securities Commissioner entered a Cease and  
 2 Desist Order against VFG for selling unregistered securities involving military retirement income  
 3 streams. *No involvement*

4 b) On September 20, 2013, the Iowa Insurance  
 5 Commissioner entered a Consent Order under which VFG was ordered to cease and desist from  
 6 violating Iowa's securities laws with respect to the sale of income stream contracts. *No involvement*

7 c) On December 10, 2013, the Securities Division of the New Mexico Regulation  
 8 and Licensing Department entered a Cease and Desist Order against VFG. The Cease and Desist  
 9 Order found that VFG, through its sales agents, deceived investors by describing the sale of income  
 10 streams from veterans' pensions and disability benefits as valid and permissible transactions, and by  
 11 omitting the material fact that the assignment of these income streams is prohibited under 37 U.S.C.  
 12 § 701 and 38 U.S.C. § 5301. *No Involvement*

13 d) On March 18, 2014, the Arkansas Securities Commissioner entered a Second  
 14 Cease and Desist Order against VFG. The Second Cease and Desist Order found that VFG had  
 15 violated the registration and antifraud provisions of the Arkansas Securities Act by among other  
 16 things: *No Involvement*

17 (i) Representing in the Contract for Sale of Payments that "Seller shall transfer  
 18 and sell to Buyer at Closing one hundred percent (100%) of Seller's right, title  
 19 and interest in and to the Payments." The Second Cease and Desist Order  
 20 found, "This is clearly a misstatement in view of federal laws prohibiting the  
 21 assignment or transfer of federal pensions." Second Cease and Desist Order  
 22 at ¶ 8. *No Involvement*

23 (ii) Representing in Section 10.2 of the Contract for Sale of Payments that the  
 24 transaction was "valid" and not an "impermissible assignment," when the  
 25 Federal Anti-Assignment Acts prohibited the sale or assignment of the pension  
 26 and benefits payments at issue. Second Cease and Desist Order at ¶ 9.

*No Involvement*

(iii) Misstating "federal laws and court cases that clearly prohibit the assignment or transfer of federal pension payments sold by VFG...." Second Cease and Desist Order at ¶ 9. *No Involvement*

e) On May 12, 2014, Pennsylvania's Department of Banking and Securities entered a Consent Order against VFG. The Consent Order found that VFG willfully violated the antifraud provision of Pennsylvania's Securities Act of 1972 by failing to disclose: (i) the identity and relevant background of its corporate officers, and (ii) that the assignment of military pensions is prohibited by federal law. *No Involvement*

f) On June 23, 2014, the Arkansas Securities Commissioner entered a Consent Order against VFG. The Consent found that VFG had violated the registration provisions of the Arkansas Securities Act, and that VFG had also violated that Act's antifraud provision with respect to the sale of income stream investments. *No Involvement*

g) On August 26, 2014, Florida's Office of Financial Regulation entered a Final Order against VFG for selling military retirement income streams as unregistered securities. *No Involvement*

h) On November 7, 2014, California's Department of Business Oversight entered a Desist and Refrain Order against VFG for selling military retirement income streams as unregistered securities and in violation of the antifraud provision in Section 25401 of the California Corporate Securities Law of 1968. *No Involvement*

53. Respondents failed to disclose to investors any of the foregoing consent orders and cease and desist orders against VFG, where Plant was the Director of Compliance, for securities law violations. *No Involvement*

V.

**VIOLATION OF A.R.S. § 44-1841**

**(Offer or Sale of Unregistered Securities)**

54. From on or about March 17, 2017, Respondents offered or sold securities in the form of notes, investment contracts and/or evidences of indebtedness within or from Arizona.

*No Involvement*

55. The securities referred to above were not registered pursuant to Articles 6 or 7 of the Securities Act.

56. This conduct violates A.R.S. § 44-1841.

VI.

**VIOLATION OF A.R.S. § 44-1842**

**(Transactions by Unregistered Dealers or Salesmen)**

57. Respondents offered or sold securities within or from Arizona while not registered as dealers or salesmen pursuant to Article 9 of the Securities Act.

58. This conduct violates A.R.S. § 44-1842.

VII.

## VIOLATION OF A.R.S. § 44-1991

**(Fraud in Connection with the Offer or Sale of Securities)**

59. In connection with the offer or sale of securities within or from Arizona, Respondents Performance Arbitrage Company, Inc., Financial Product Distributors, LLC, Mark Corbett, and Upstate Law Group, LLC directly or indirectly: (i) employed a device, scheme, or artifice to defraud; (ii) made untrue statements of material fact or omitted to state material facts that were necessary in order to make the statements made not misleading in light of the circumstances under which they were made; or (iii) engaged in transactions, practices, or courses of business that operated or would operate as a fraud or deceit upon offerees and investors. Respondents' conduct includes, but is not limited to, the following:

*Denied*

a) failing to disclose to investors that the Federal Anti-Assignment Acts prohibit the sale or assignment of veterans' pension and disability payments; *Denied*

b) misrepresenting in the Contract for Sale of Payments that the transaction was “valid” and not an “impermissible assignment” while failing to disclose the impact of the Federal Anti-Assignment Acts;

c) misleading investors that regulations “restrict” the assignment of pension and disability payments when the Federal Anti-Assignment Acts do not just “restrict” but prohibit their assignment; *Denied*

d) representing that “certain courts have held transactions of this nature to be enforceable” but a future court might not, while failing to disclose that several courts applying the Federal Anti-Assignment Acts have held transactions of this nature to be unenforceable; *Denied*

e) misleading investors about the risk that a veteran might re-direct the pension or disability benefits back to himself by failing to disclose that the Federal Anti-Assignment Acts prohibit the sale or assignment of the pension and disability payments in the first place; *Denied*

f) misleading investors about the potential for an investor to obtain and collect a judgment against a veteran who re-directed his disability benefits payments to himself by failing to disclose that such payments are “exempt from the claim of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever....” 38 U.S.C. § 5301(a). *Denied*

g) deceiving investors with the illusions of legality and safety by asserting the purported protection Upstate Law Group, LLC and the use of its IOLTA trust account provided to investors; and *Denied*

h) failing to disclose to investors the numerous consent orders and cease and desist orders against VFG, where Plant was the Director of Compliance, for securities law violations.

60. This conduct violates A.R.S. § 44-1991. *Denied*

VIII. *Mark Carter*

**CONTROL PERSON LIABILITY PURSUANT TO A.R.S. § 44-1999**

61. From at least March 17 through May 23, 2017, Plant has been and/or held herself out as a Vice-President and the Chief Operating Officer of PAC.

62. From at least March 17 through May 23, 2017, Plant directly or indirectly controlled PAC within the meaning of A.R.S. § 44-1999. Therefore, Plant is jointly and severally liable to the

1 same extent as PAC for its violations of A.R.S. § 44-1991 from at least March 17 through May 23,  
2 2017.

3 63. From at least March 17 through May 23, 2017, Woodard has been and/or held himself  
4 out as the Managing Partner of FPD.

5 64. From at least March 17 through May 23, 2017, Woodard directly or indirectly  
6 controlled FPD within the meaning of A.R.S. § 44-1999. Therefore, Woodard is jointly and severally  
7 liable to the same extent as FPD for its violations of A.R.S. § 44-1991 from at least March 17 through  
8 May 23, 2017.

9 65. From at least March 17 through May 23, 2017, Kern-Fuller has been and/or held  
10 herself out as a partner in ULG.

11 66. From at least March 17 through May 23, 2017, Kern-Fuller directly or indirectly  
12 controlled ULG within the meaning of A.R.S. § 44-1999. Therefore, Kern-Fuller is jointly and  
13 severally liable to the same extent as ULG for its violations of A.R.S. § 44-1991 from at least March  
14 17 through May 23, 2017.

## 15 IX.

### 16 REQUESTED RELIEF

17 The Division requests that the Commission grant the following relief:

18 1. Order Respondents to permanently cease and desist from violating the Securities Act  
19 pursuant to A.R.S. § 44-2032;

20 2. Order Respondents to take affirmative action to correct the conditions resulting from  
21 Respondents' acts, practices, or transactions, including a requirement to make restitution pursuant to  
22 A.R.S. § 44-2032;

23 3. Order Respondents to pay the state of Arizona administrative penalties of up to five  
24 thousand dollars (\$5,000) for each violation of the Securities Act, pursuant to A.R.S. § 44-2036;

25 4. Order that the respective marital communities of Respondents Michael David Woodard  
26 and Jane Doe Woodard, and Mark Corbett and Jane Doe Corbett be subject to any order of restitution,

1 rescission, administrative penalties, or other appropriate affirmative action pursuant to A.R.S. § 25-215;  
2 and

3 5. Order any other relief that the Commission deems appropriate.

4 **X.**

5 **HEARING OPPORTUNITY**

6 Each respondent including Respondent Spouses may request a hearing pursuant to A.R.S. § 44-  
7 1972 and A.A.C. R14-4-306. **If a Respondent or a Respondent Spouse requests a hearing, the**  
8 **requesting respondent must also answer this Notice.** A request for hearing must be in writing and  
9 received by the Commission within 10 business days after service of this Notice of Opportunity for  
10 Hearing. The requesting respondent must deliver or mail the request to Docket Control, Arizona  
11 Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007. Filing instructions may be  
12 obtained from Docket Control by calling (602) 542-3477 or on the Commission's Internet web site at  
13 <http://www.azcc.gov/divisions/hearings/docket.asp>.

14 If a request for a hearing is timely made, the Commission shall schedule the hearing to begin 20  
15 to 60 days from the receipt of the request unless otherwise provided by law, stipulated by the parties, or  
16 ordered by the Commission. If a request for a hearing is not timely made the Commission may, without  
17 a hearing, enter an order granting the relief requested by the Division in this Notice of Opportunity for  
18 Hearing.

19 Persons with a disability may request a reasonable accommodation such as a sign language  
20 interpreter, as well as request this document in an alternative format, by contacting Kacie Cannon,  
21 ADA Coordinator, voice phone number (602) 542-3931, e-mail [kcannon@azcc.gov](mailto:kcannon@azcc.gov). Requests  
22 should be made as early as possible to allow time to arrange the accommodation. Additional  
23 information about the administrative action procedure may be found at  
24 <http://www.azcc.gov/divisions/securities/enforcement/AdministrativeProcedure.asp>

## XI.

## ANSWER REQUIREMENT

Pursuant to A.A.C. R14-4-305, if a Respondent or a Respondent Spouse requests a hearing, the requesting respondent must deliver or mail an Answer to this Notice of Opportunity for Hearing to Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007, within 30 calendar days after the date of service of this Notice. Filing instructions may be obtained from Docket Control by calling (602) 542-3477 or on the Commission's Internet web site at <http://www.azcc.gov/divisions/hearings/docket.asp>.

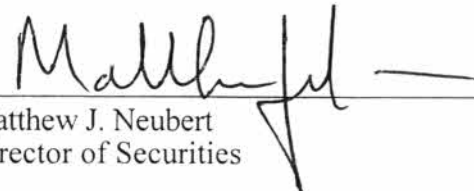
Additionally, the answering respondent must serve the Answer upon the Division. Pursuant to A.A.C. R14-4-303, service upon the Division may be made by mailing or by hand-delivering a copy of the Answer to the Division at 1300 West Washington, 3<sup>rd</sup> Floor, Phoenix, Arizona, 85007, addressed to James D. Burgess.

The Answer shall contain an admission or denial of each allegation in this Notice and the original signature of the answering respondent or respondent's attorney. A statement of a lack of sufficient knowledge or information shall be considered a denial of an allegation. An allegation not denied shall be considered admitted.

When the answering respondent intends in good faith to deny only a part or a qualification of an allegation, the respondent shall specify that part or qualification of the allegation and shall admit the remainder. Respondent waives any affirmative defense not raised in the Answer.

The officer presiding over the hearing may grant relief from the requirement to file an Answer for good cause shown.

Dated this 29 day of June, 2018.

  
Matthew J. Neubert  
Director of Securities



**FROM:** MARK Corbett

28 VIVADO ST.  
LADERA RANCH CA 92694

**TO:** Answer to the Division  
1300 West Washington, 3rd Floor  
Phoenix, Arizona 85007  
ATTN James D. Burgess

Received  
JUL 23 2018  
Arizona Corp. Commission  
Securities Division

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